

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Resources

Industry Research and Development Act 1986

Industry Research and Development (Resources Sector Methane Abatement Technology Development Program) Instrument 2023

Purpose and Operation

Section 33 of the *Industry Research and Development Act 1986* (the IR&D Act) provides a mechanism for the Minister to prescribe programs, by disallowable legislative instrument, in relation to industry, innovation, science or research, including in relation to the expenditure of Commonwealth money under such programs.

The statutory framework provided by section 33 of the IR&D Act enables a level of flexibility to provide authority for Commonwealth spending activities in relation to industry, innovation, science and research programs. This allows the Government to respond quickly and appropriately to the need to implement innovative ideas and pilot programs on an ongoing basis and as opportunities arise. Prescribing programs in legislative instruments provides transparency and parliamentary oversight of Government programs and spending activities, whilst reducing administrative burden on the Commonwealth.

Once a program is prescribed by the Minister under section 33, subsection 34(1) allows the Commonwealth to make, vary or administer arrangements in relation to activities under the prescribed program. Arrangements may include contracts, funding agreements or other arrangements, and may provide for money to be payable by the Commonwealth to one or more third parties. The power conferred on the Commonwealth by subsection 34(1) may be exercised on behalf of the Commonwealth by a Minister or an accountable authority of a non-corporate Commonwealth entity, or by their delegate (under section 36).

The purpose of the *Industry Research and Development (Resources Sector Methane Abatement Technology Development) Instrument 2023* (the Legislative Instrument) is to prescribe the *Resources Sector Methane Abatement Technology Development Program* (the Program). The funding for the Program has been secured through the Department of Industry, Science and Resources (the Department) 2022-2023 Budget. The Program provides \$10 million as part of the Australian Government's commitment to reducing methane emissions from the resources sector.

The Program will fund eligible projects to advance the maturity of methane abatement technologies for use in the resources sector. This includes enabling technologies, such as those that support methane safety and utilisation. This research will accelerate the commercialisation and deployment of key technologies. Ultimately, the Program seeks to reduce greenhouse gas emissions to support Australia's emissions reduction targets and climate agenda.

Funding is available to successful universities, publicly-funded research organisations and non-profit research organisations to undertake eligible projects to increase the technology readiness level of target methane abatement technologies for the resource sector.

Funding authorised by this Legislative Instrument comes from Program 1.3: Supporting a Strong Resources Sector, Outcome 1, as set out in the *Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.11, Industry, Science and Resources Portfolio* (https://www.industry.gov.au/sites/default/files/2022-10/October_2022-23_Industry%2C%20Science%20and%20Resources_PBS.pdf) at page 41.

The Program will be delivered by AusIndustry, which is a specialised design, management and delivery body within the Department with extensive expertise and capability in delivering similar programs.

The Program is a competitive, merits-based grants program. The Program is administered by the Department in accordance with the *Commonwealth Grant Rules and Guidelines 2017*. Eligibility and merit criteria are outlined in the Program guidelines, available at <https://business.gov.au/grants-and-programs/>.

Spending decisions will be made by the Program Delegate who is the Manager responsible for administering the Program, taking into account the recommendations of an independent assessment committee. The Program Delegate is an officer who holds delegation under the Department's general financial framework, including delegation under the *Public Governance, Performance and Accountability Act 2013*, and sections 34 and 35 of the IR&D Act.

Grants will be a minimum of \$1 million and up to a maximum of \$5 million. The grant amount may be up to 100% of eligible project costs. The total amount of grant funding available is \$8.5 million. Departmental funding and preliminary research funding makes up the balance of the \$10 million program.

The Program involves the allocation of finite resources between competing applicants and therefore falls within the category of decisions that would not usually be subject to merits review according to paragraph 4.11 of the Administrative Review Council guide, *What decisions should be subject to merits review?* available at <https://www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications/what-decisions-should-be-subject-merit-review-1999>. In addition, there is a robust and extensive assessment process, an enquiry and feedback process, and an existing complaints mechanism for affected applicants. Therefore, external merits review does not apply to decisions about the provision of grants under the Program.

Applications will be assessed against the eligibility criteria and merit criteria set out in the Program guidelines in two stages. At first instance, applications will be assessed by AusIndustry against the eligibility criteria. An independent assessment committee will then consider eligible applications against the merit criteria. This will include comparing the

applications and scoring each application out of 100. The committee may comprise representatives from the Australian Government, selected state and territory governments, and other independent technical experts. The independent assessment committee may seek input from independent experts to inform their assessments.

Applications must address the eligibility and merit criteria, and provide relevant supporting information. The amount of detail and supporting evidence should be relative to the project size, complexity and funding amount requested. Larger and more complex projects should include more detailed evidence. To be competitive, applications must score highly against each merit criterion.

After considering the applications, the independent assessment committee will make recommendations to the Program Delegate regarding those applications suitable for funding. The Program Delegate will make the final decision about which grants to approve, taking into consideration the independent assessment committee's recommendations, and the availability of grant funds. The Program Delegate will not approve funding if there are insufficient program funds available across relevant financial years for the Program.

Both successful and unsuccessful applicants will be informed in writing. Unsuccessful applicants have an opportunity to discuss the outcome with the Department and can submit a new application for the same or similar project in future funding rounds. Where this occurs, applicants should include new or more information to address the weaknesses identified in their previous application.

Persons who are otherwise affected by decisions or who have complaints about the Program will also have recourse to the Department. The Department investigates any complaints about the Program in accordance with its complaints policy and procedures. If a person is not satisfied with the way the Department handles the complaint, they may lodge a complaint with the Commonwealth Ombudsman.

The Legislative Instrument specifies that the legislative powers in respect of which the Instrument is made are the following:

External affairs power

The Legislative Instrument specifies that the legislative power in respect of which it is made is the external affairs power (section 51(xxix) of the Constitution).

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation implementing Australia's international obligations under treaties to which it is a party.

Australia has the following international obligations under the Kyoto Protocol, the Paris Agreement and the United Nations Framework Convention on Climate Change (UNFCCC).

Article 10(b) of the Kyoto Protocol obliges parties to formulate, implement, publish and regularly update national, and where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change in the energy, transport, and industry sectors as well as agriculture, forestry and waste management.

Article 4.2 of the Paris Agreement obliges parties to prepare, communicate and maintain successive nationally determined contributions that they intend to achieve, and pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

Article 4(1)(b) of the UNFCCC obliges parties to formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adaptation to climate change.

Article 4(1)(c) of the UNFCCC obliges parties to promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors.

Article 4(2)(a) of the UNFCCC obliges parties to adopt national policies and take corresponding measures on the mitigation of climate change, by limiting their anthropogenic emissions of greenhouse gases and protecting and enhancing their greenhouse gas sinks and reservoirs.

Funding provided under the Legislative Instrument will encourage measures that reduce emissions, by providing funding to increase research into technologies that have high potential for methane reduction, specifically in the coal and gas sectors.

Further details of the Legislative Instrument are set out at **Attachment A**.

Background

Australia has legislated targets of net zero emissions by 2050 and a 43% cut on 2005 emissions by 2030. The country is also joining international climate initiatives, such as the Global Methane Pledge, which commits signatories to collectively pursuing a 30% cut in methane emissions compared to 2020, by 2030.

Methane emissions represent about 25% of Australia's total greenhouse gas emissions. The resources sector is the second largest contributor to this figure, producing almost 30% of Australia's methane. Reducing these emissions in the short term will be critical to slowing global heating and meeting the goals of the Paris Climate Agreement.

Research, development and demonstration projects addressing fugitive methane emissions from coal or gas production are currently out of scope for existing Government funding for low emissions technologies through the Australian Renewable Energy Agency and the Clean Energy Finance Corporation. The Program aims to address this gap and provide near term support for researchers to grow the maturity of valuable abatement technologies and enable the resources sector to reduce its emissions.

Authority

Section 33 of the IR&D Act provides authority for the Legislative Instrument.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, the Attorney-General's Department has been consulted on this Legislative Instrument.

The Department has engaged with industry and research stakeholders, and Commonwealth, agencies regarding the Program.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at **Attachment B**

Regulatory Impact

It is estimated that the regulatory burden is likely to be minor (OBPR22-03392).

The Regulation Impact Statement is included at **Attachment C**.

Details of the *Industry Research and Development (Resources Sector Methane Abatement Technology Development) Instrument 2023*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Resources Sector Methane Abatement Technology Development Program) Instrument 2023*.

Section 2 – Commencement

This section provides that the Legislative Instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section specifies the provision of the IR&D Act under which the Legislative Instrument is made.

Section 4 – Definitions

This item provides for definitions of terms used in the Legislative Instrument.

The UNFCCC, Kyoto Protocol and Paris Agreement are defined in the same way as in other Commonwealth legislation and are available from the Australian Treaty Series at: <http://www.austlii.edu.au/au/other/dfat/treaties/ATS/>. These treaties are defined for the purpose of specifying the external affairs power as a relevant legislative power for the Legislative Instrument under subsection 33(3) of the IR&D Act.

The text of the treaties is not applied, adopted or incorporated by the Legislative Instrument and so subsection 14(2) of the *Legislation Act 2003* does not apply to limit the reference to these treaties as in force for Australia from time to time. Australia continues to implement the obligations under these treaties as amended over time, such as in relation to Australia's ratification of the Doha Amendment to the Kyoto Protocol, which commenced on 31 December 2020.

Section 5 – *Resources Sector Methane Abatement Technology Development Program*

This section prescribes the Program for the purposes of section 33 of the IR&D Act.

The Program provides funding for research and development into technologies that will:

- a. alone, or when used in combination with other technologies, abate methane emissions in the resources sector; or

- b. support other technologies that abate methane emissions in the resources sector. This includes enabling technologies that support others to abate methane emissions by enabling methane safety or utilisation.

Section 6 – Specified Legislative Power

For the purposes of subsection 33(3) of the Act, the power of the Parliament to make laws with respect to external affairs (within the meaning of paragraph 51(xxix) of the Constitution), as it relates to measures that would assist Australia to meet its obligations under one or more of the following, is specified:

- (a) the Kyoto Protocol, particularly Article 10;
- (b) the Paris Agreement, particularly Article 4;
- (c) the United Nations Framework Convention on Climate Change, particularly Article 4.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Industry Research and Development (Resources Sector Methane Abatement Technology Development Program) Instrument 2023

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Industry Research and Development (Resources Sector Methane Abatement Technology Development Program) Instrument 2023* (the Legislative Instrument) provides legislative authority to commit Commonwealth funding for the Resources Sector Methane Abatement Technology Development Program (the Program). The Program will fund research and development of technologies that will reduce methane emissions from the resources sector. The objective of this research is to reduce costs and accelerate deployment of methane abatement technology within the industry. Ultimately, this policy seeks to mitigate greenhouse emissions from Australian industry.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Hon Madeleine King MP

Minister for Resources

Minor Regulation Impact Statement Supporting Resources Sector Methane Reduction

Department of Industry, Science and Resources

OBPR Reference number: OBPR22-03392

Summary of the proposed policy and any options considered:

This proposal seeks to repurpose \$9.8 million from 2022-23 to 2024-25 to fund research, development and demonstration projects that advance new commercially viable options for methane abatement in the resources sector.

As a first step, the department will procure research services through an open tender process to conduct a stocktake of barriers to methane abatement in the resources industry. This stocktake will consider what industry is currently doing and where the greatest opportunities are for reducing methane emissions through further research, development and deployment.

The priority research technologies identified by the stocktake will become the focus of a subsequent competitive grant round open to universities, publicly-funded research organisations (PFRs) and non-profit research organisations. The Minister for Resources will agree the final list of priority technologies in correspondence with the Prime Minister, Finance Minister and Treasurer. A single round of research grant applications that will target the priority technologies will follow in 2023.

What are the regulatory impacts associated with this proposal? Explain.

Participation in the program is voluntary and no regulatory burden will be imposed on any entity not bidding for the procurement or applying for grant funding. Organisations that seeking to participate in the procurement and grant program will incur administrative costs in:

- familiarisation with the new program and assessing whether to proceed with an application
- completing an application to demonstrate eligibility and apply for funding
- complying with reporting requirements for successful applicants.

What are the regulatory costs/savings associated with this proposal? Explain and quantify. Have offsets been identified for increases in regulatory costs? If not, why?

A regulatory offset has not been identified. The Department of Industry, Science, and Resources anticipates that the Business Grants Hub process poses the lowest possible regulatory costs for grant applicants.

The total regulatory (administrative) cost incurred for this proposal over the duration of the program is approximately \$0.058 million. This is based on:

	Procurement	Grants program
Hourly labour cost	\$73.05 per hour (hourly cost of \$41.74 x 1.75 for on-costs)	
Estimated number of applicants	5	20
Hours taken for organisations to familiarise themselves with the program and assess whether to proceed with an application	2	2
time taken to prepare an application	22.5	22.5
Grants delivered	N/A	5
Hours taken to comply with reporting requirements	N/A	25
Sub-total (\$)	8,950	44,900
Grand total (\$)	53,850	

Regulatory burden estimate (RBE) table

This table can be used to present quantifiable impacts using the Regulatory Burden Measurement Framework. Please refer to the Regulatory Measurement Framework Guidance Note, available on the OBPR website, for more information.

Average annual regulatory costs				
Change in costs (\$ million)	Individuals	Business	Community organisations	Total change in cost
Total, by sector	\$0	\$0.058	\$0	\$0.058